

## 1 SENATE BILL NO. 307

2 INTRODUCED BY K. TOOLE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO UNIVERSAL  
5 SYSTEM BENEFITS PROGRAMS FOR ELECTRICITY AND NATURAL GAS; DEFINING THE TERM  
6 "RENEWABLE RESOURCE"; REVISING THE UNIVERSAL SYSTEM BENEFITS CHARGE RATES;  
7 ELIMINATING THE DATE RESTRICTION FOR UNIVERSAL SYSTEM BENEFITS CHARGE RATES;  
8 CLARIFYING ALLOWABLE UTILITY CREDITS TOWARD THE ANNUAL UNIVERSAL SYSTEM BENEFITS  
9 PROGRAMS FUNDING REQUIREMENT; ELIMINATING THE AUTHORITY FOR COOPERATIVE UTILITIES  
10 TO COLLECTIVELY POOL THEIR STATEWIDE CREDITS TO SATISFY THEIR ANNUAL FUNDING  
11 REQUIREMENT; REVISING A UTILITY'S ANNUAL FUNDING REQUIREMENT FOR LOW-INCOME ENERGY  
12 AND WEATHERIZATION ASSISTANCE; ESTABLISHING A UTILITY'S ANNUAL FUNDING REQUIREMENT  
13 FOR RENEWABLE RESOURCE DEVELOPMENT PROGRAMS OR ACTIVITIES; PROVIDING THAT A UTILITY  
14 MAY RECEIVE CREDIT FOR INTERNAL RENEWABLE RESOURCE DEVELOPMENT PROGRAMS AND  
15 ACTIVITIES; PROVIDING THAT IF A UTILITY'S INTERNAL PROGRAMS DO NOT SATISFY THE ANNUAL  
16 FUNDING PROVISIONS, THEN THE UTILITY SHALL MAKE A PAYMENT INTO A STATE SPECIAL REVENUE  
17 ACCOUNT FOR THE DIFFERENCE; REVISING LARGE CUSTOMER UNIVERSAL SYSTEM BENEFITS  
18 PROGRAMS ANNUAL FUNDING OBLIGATIONS; REVISING PUBLIC UTILITY, COOPERATIVE UTILITY, AND  
19 LARGE CUSTOMER UNIVERSAL SYSTEM BENEFITS PROGRAMS REPORTING REQUIREMENTS;  
20 REQUIRING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES; CLARIFYING INFORMATION  
21 CONTAINED IN COOPERATIVE UTILITY BILLING STATEMENTS; REQUIRING THE DEPARTMENT OF  
22 REVENUE TO ADOPT RULES; REVISING THE UNIVERSAL SYSTEM BENEFITS PROGRAMS CREDIT  
23 REVIEW PROCESS; INCREASING THE NATURAL GAS UTILITY'S ANNUAL FUNDING REQUIREMENT FOR  
24 LOW-INCOME WEATHERIZATION AND ENERGY BILL ASSISTANCE; PROVIDING THE COMMISSION WITH  
25 RULEMAKING AUTHORITY FOR NATURAL GAS UNIVERSAL SYSTEM BENEFITS PROGRAMS  
26 REPORTING REQUIREMENTS; AMENDING SECTIONS 69-3-1408, 69-8-103, 69-8-402, 69-8-403, 69-8-409,  
27 69-8-412, 69-8-413, AND 69-8-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

28

29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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1           **Section 1.** Section 69-3-1408, MCA, is amended to read:

2           "**69-3-1408. Universal system benefits programs -- establishing nonbypassable rate --**  
 3 **commission rulemaking.** (1) A natural gas utility shall implement, upon commission approval, ~~a universal~~  
 4 ~~system benefits program that considers existing universal system benefits programs in the state~~ programs that  
 5 take into account historic levels of funding by the utility for universal system benefits programs, the needs of the  
 6 utility's low-income natural gas customers, impacts on the utility's customers, appropriate allocations within and  
 7 between the authorized universal system benefits programs, and any other factors that the commission  
 8 considers necessary.

9           (2) The commission shall establish a universal system benefits charge that either all natural gas  
 10 transmission services providers or all distribution services providers, or both, in the state of Montana shall charge  
 11 to all end-use customers, taking into consideration, among other factors, appropriate levels of funding for  
 12 universal system benefits programs, impacts on ratepayers, existing universal system benefits programs in the  
 13 state, the current level of expenditure by the natural gas utility, cost-effectiveness, and similar costs imposed  
 14 in other states, and the interaction between universal system benefits programs funded by the electricity  
 15 universal system benefits charge established in 69-8-402 and the universal system benefits programs funded  
 16 by the natural gas universal system benefits charge. The method of assessing those rates may not  
 17 disproportionately burden a large transmission services provider's customers. Within the universal system  
 18 benefits charge, a natural gas utility's annual funding requirement for low-income weatherization and low-income  
 19 energy bill assistance is established at ~~0.42%~~ 60% of a natural gas utility's total annual revenue universal system  
 20 benefits charge. A natural gas utility must receive credit for its internal programs or activities that qualify as  
 21 universal system benefits programs.

22           ~~(3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need for~~  
 23 ~~universal system benefits programs and annual funding requirements and shall make recommendations to the~~  
 24 ~~58th legislature regarding the future need for universal system benefits programs. The determination should~~  
 25 ~~focus specifically on the existence of markets to provide for any of the universal system benefits programs or~~  
 26 ~~on whether other means for funding those universal system benefits programs have developed. These~~  
 27 ~~recommendations may also address how future reevaluations will be provided, if necessary.~~

28           (3) The commission shall adopt rules establishing requirements for a natural gas utility's reporting of  
 29 activities and expenditures for programs funded by the natural gas universal system benefits charge for  
 30 low-income weatherization, low-income energy bill assistance, and local conservation programs."

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**Section 2.** Section 69-8-103, MCA, is amended to read:

**"69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider of a utility that has restructured in accordance with this chapter.

(9) "Default supply service" means the provision of electricity supply by a default supplier.

(10) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(11) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

1 (12) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and  
2 marketers, offering to sell electricity to retail customers in the state of Montana.

3 (13) "Electricity supply costs" means the actual costs of providing default supply service, including but  
4 not limited to:

5 (a) capacity costs;

6 (b) energy costs;

7 (c) fuel costs;

8 (d) ancillary service costs;

9 (e) demand-side management and energy efficiency costs;

10 (f) transmission costs, including congestion and losses;

11 (g) billing costs;

12 (h) planning and administrative costs; and

13 (i) any other costs directly related to the purchase of electricity, management of default electricity supply  
14 costs, and provision of default supply and related services.

15 (14) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that  
16 authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

17 (15) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not  
18 limited to:

19 (i) distribution;

20 (ii) connection;

21 (iii) disconnection; and

22 (iv) termination rates and charges that are authorized by the commission in a financing order to permit  
23 recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs  
24 and of acquiring transition property through a plan approved by the commission in the financing order, including  
25 the costs of issuing, servicing, and retiring transition bonds.

26 (b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must  
27 include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery  
28 period is modified by the transactions approved in the financing order.

29 (16) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission,  
30 distribution, and unregulated retail energy services assets and operations.

1 (17) "Interested person" means a retail electricity customer, the consumer counsel established in  
2 5-15-201, the commission, or a utility.

3 (18) "Large customer" means, for universal system benefits programs purposes, a customer with an  
4 individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that  
5 individual load.

6 (19) "Local governing body" means a local board of trustees of a rural electric cooperative.

7 (20) "Low-income customer" means those energy consumer households and families with incomes at  
8 or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

9 (21) "Net metering" means measuring the difference between the electricity distributed to and the  
10 electricity generated by a customer-generator that is fed back to the distribution system during the applicable  
11 billing period.

12 (22) "Net metering system" means a facility for the production of electrical energy that:

13 (a) uses as its fuel solar, wind, or hydropower;

14 (b) has a generating capacity of not more than 50 kilowatts;

15 (c) is located on the customer-generator's premises;

16 (d) operates in parallel with the distribution services provider's distribution facilities; and

17 (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

18 (23) "Nonbypassable rates or charges" means rates or charges that are approved by the commission  
19 and imposed on a customer to pay the customer's share of transition costs or universal system benefits  
20 programs costs even if the customer has physically bypassed either the utility's transmission or distribution  
21 facilities.

22 (24) "Pilot program" means an experimental program using a select set of small customers to assess  
23 the potential for developing and offering customer choice of electricity supply to small customers in the future.

24 (25) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter  
25 3, on May 2, 1997, including the public utility's successors or assignees.

26 (26) "Qualifying load" means, for payments and credits associated with universal system benefits  
27 programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory  
28 in which the customer qualifies as a large customer.

29 (27) "Renewable resource" means the production of electricity from any of the following sources:

30 (a) wind;

- 1           **(b) solar;**
- 2           **(c) geothermal;**
- 3           **(d) water power derived from a hydroelectric project with a nameplate rating of 1 megawatt or less;**
- 4           **(e) landfill gas;**
- 5           **(f) gas produced during the treatment of wastewater;**
- 6           **(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic**
- 7 **fuels from wood, forest, or field residues, except that low-emission, non-toxic biomass does not include wood**
- 8 **pieces that have been treated with chemical preservatives, such as creosote, pentachlorophenol, or**
- 9 **copper-chroma-arsenic; or**
- 10           **(h) hydrogen derived from any of the sources described in subsections (27)(a) through (27)(g) for use**
- 11 **in fuel cells.**
- 12           ~~(27)~~**(28)** "Small customer" means a residential customer or a commercial customer who has an
- 13 individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or
- 14 a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts
- 15 of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.
- 16           ~~(28)~~**(29)** "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents,
- 17 and other entities acting for the benefit of that bondholder.
- 18           ~~(29)~~**(30)** "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
- 19 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer
- 20 that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds
- 21 must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.
- 22           ~~(30)~~**(31)** "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay
- 23 the customer's share of transition costs.
- 24           ~~(31)~~**(32)** "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when
- 25 a utility customer does not have any liability for payment of transition costs.
- 26           ~~(32)~~**(33)** "Transition costs" means:
- 27           (a) a public utility's net verifiable generation-related and electricity supply costs, including costs of
- 28 capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring
- 29 retail open access or customer choice;
- 30           (b) those costs that include but are not limited to:

1 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
 2 be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan  
 3 and conservation investments made prior to universal system benefits charge implementation;

4 (ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying  
 5 facility contracts;

6 (iii) existing generation investments and supply commitments or other obligations incurred before May  
 7 2, 1997, and costs arising from these investments and commitments;

8 (iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase  
 9 contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition  
 10 bonds; and

11 (v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated  
 12 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

13 ~~(33)~~(34) "Transition period" means the period ending July 1, 2027.

14 ~~(34)~~(35) "Transition property" means the property right created by a financing order, including without  
 15 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
 16 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that  
 17 are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition  
 18 amounts that are authorized by the commission in the financing order to recover transition costs and the costs  
 19 of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property,  
 20 including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition  
 21 property before the utility's sale or transfer or any other right created under this section or created in the financing  
 22 order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

23 ~~(35)~~(36) "Transmission facilities" means those facilities that are used to provide transmission services  
 24 as determined by the federal energy regulatory commission and the commission.

25 ~~(36)~~(37) "Transmission services provider" means an entity controlling or operating transmission facilities.

26 ~~(37)~~(38) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on  
 27 a customer to pay the customer's share of universal system benefits programs costs.

28 ~~(38)~~(39) "Universal system benefits programs" means public purpose programs for:

29 (a) cost-effective local energy conservation;

30 (b) low-income customer weatherization;

- 1 (c) renewable resource projects and applications, including those that capture unique social and energy  
 2 system benefits or that provide transmission and distribution system benefits;
- 3 (d) research and development programs related to energy conservation and renewables;
- 4 (e) market transformation designed to encourage competitive markets for ~~public-purpose~~ universal  
 5 system benefits programs; and
- 6 (f) low-income energy and weatherization assistance.
- 7 ~~(39)~~(40) "Utility" means any public utility or cooperative utility."  
 8

9 **Section 3.** Section 69-8-402, MCA, is amended to read:

10 **"69-8-402. Universal system benefits programs.** (1) Universal system benefits programs are  
 11 established for the state of Montana to ensure continued funding of and new expenditures for energy  
 12 conservation, renewable resource projects and applications, and low-income energy assistance.

13 (2) (a) Beginning January 1, 1999, through December 31, 2005, 2.4% of each utility's annual retail sales  
 14 revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level  
 15 for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the  
 16 commission shall establish rates for utilities subject to its jurisdiction and the local governing boards body of  
 17 cooperatives shall establish rates for the cooperatives. These universal system benefits charge rates must  
 18 remain in effect through December 31, 2005.

19 (b) (i) Subject to the recalculation in subsection (2)(b)(ii), beginning January 1, 2006, 3% of each utility's  
 20 annual retail sales revenue in Montana for the calendar year ending December 31, 2004, is established as the  
 21 funding level for universal system benefits programs. To collect this amount of funds on an annualized basis  
 22 in 2006, the commission shall establish rates for utilities subject to its jurisdiction and the local governing body  
 23 of cooperatives shall establish rates for cooperatives.

24 (ii) Beginning January 1, 2006, once every 4 calendar years, the funding level must be recalculated  
 25 based on 3% of each utility's annual retail sales revenue in Montana for the calendar year concluding on  
 26 December 31, 2008, and on December 31 of each succeeding second year of the 4-year period. The  
 27 commission and the local governing body of cooperatives shall reestablish rates, to go into effect on January  
 28 1, 2010, and on January 1 of each succeeding fourth calendar year in order to collect the adjusted funding level.

29 ~~(a)~~(c) The recovery of all universal system benefits programs costs imposed pursuant to this section  
 30 is authorized through the imposition of a universal system benefits charge assessed at the meter for each local

1 utility system customer as provided in this section.

2 ~~(b)(d)~~ A Except as provided in subsection (4)(c), a utility must receive credit toward annual funding  
3 requirements for the utility's internal programs or activities that qualify as universal system benefits programs;  
4 ~~including those amortized or nonamortized portions of expenditures for the purchase of power that are for the~~  
5 ~~acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance,~~  
6 ~~and for large customers' programs or activities as provided in subsection (7).~~ The department of revenue shall  
7 review claimed credits of the utilities and large ~~customers~~ customers' expenditures and activities pursuant to  
8 69-8-414.

9 ~~(e)(e)~~ A utility's distribution services provider at which the sale of power for final end use occurs is the  
10 utility that receives credit for the universal system benefits programs expenditure.

11 ~~(d)(f)~~ A customer's distribution services provider shall collect universal system benefits funds ~~less any~~  
12 ~~allowable credits.~~

13 ~~(e)(g)~~ For a utility to receive credit for ~~low-income-related~~ universal system benefits programs  
14 expenditures, the activity must have taken place in Montana.

15 ~~(f)~~ ~~If a utility's or a large customer's credit for internal activities does not satisfy the annual funding~~  
16 ~~provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund~~  
17 ~~established in 69-8-412 for any difference.~~

18 ~~———(3)~~ ~~Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding~~  
19 ~~requirements for universal system benefits programs and low-income energy assistance.~~

20 ~~(4)(3)~~ A utility's transition plan must describe how the utility proposes to provide for universal system  
21 benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to  
22 measure the utility's level of contribution to each program.

23 ~~(5)(4)(a)~~ A Except as provided in 69-8-403(8) and 69-8-413(1), a utility's ~~minimum~~ annual funding  
24 requirement for low-income energy and weatherization assistance is established at ~~47%~~ 30% of the utility's  
25 annual universal system benefits funding level ~~and is inclusive within the overall universal system benefits~~  
26 ~~funding level.~~

27 ~~(a)(b)~~ A Except as provided in subsection (4)(c), a utility must receive credit toward the utility's  
28 low-income energy and weatherization assistance annual funding requirement for the utility's internal low-income  
29 energy and weatherization assistance programs or activities.

30 (c) A utility's internal low-income energy and weatherization assistance programs or activities funded

1 by large customers' allocations pursuant to subsection (7)(a) may not be used by the utility to meet its annual  
 2 low-income funding requirement.

3 ~~(b)(d)~~ If a utility's credit for internal low-income energy and weatherization assistance programs or  
 4 activities does not satisfy its annual funding requirement; or if the utility's low-income energy and weatherization  
 5 assistance programs or activities do not fully use the large customer's allocations pursuant to subsection (7)(a),  
 6 then the utility shall make a payment for any difference to the universal low-income energy and weatherization  
 7 assistance fund established in ~~69-8-412~~ 69-8-412(1)(b).

8 (5)(a) A utility's annual funding requirement for renewable resource development programs or activities  
 9 is established at 15% of the utility's annual universal system benefits funding level.

10 (b) A utility must receive credit toward the utility's renewable resource annual funding requirement for  
 11 the utility's internal renewable resource development programs or activities.

12 (c) If a utility's credit for internal renewable resource development programs or activities does not satisfy  
 13 its annual funding requirement, then the utility shall make a payment for any difference to the universal system  
 14 benefits fund established in 69-8-412(1)(a).

15 (6) Except as provided in subsections (4)(d) and (5)(c), if a utility's credit for internal programs or  
 16 activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment  
 17 to the universal system benefits fund established in 69-8-412(1)(a) for any difference.

18 ~~(6) An individual customer may not bear a disproportionate share of the local utility's funding~~  
 19 ~~requirements, and a sliding scale must be implemented to provide a more equitable distribution of program~~  
 20 ~~costs.~~

21 (7) (a) A large customer shall:

22 (i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying  
 23 load equal to the lesser of:

24 ~~—— (A) \$500,000, less the large customer credits provided for in this subsection (7); or~~

25 ~~—— (B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour~~  
 26 ~~purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);~~

27 (i) on an annual basis, allocate a minimum of 30% of its total universal system benefits charge for that  
 28 year for low-income energy and weatherization assistance; and

29 (ii) inform the large customer's utility, no later than January 15 of the year following the year in which the  
 30 large customer paid the applicable universal system benefits charge, of the amount of the charge that the large

1 customer decides to allocate for low-income energy and weatherization assistance.

2 (b) The large customer's utility shall use the large customer's allocation for the utility's internal  
3 low-income energy and weatherization assistance programs or activities.

4 ~~(ii)(c) must~~ A large customer may receive credit toward that large customer's reimbursement from its  
5 utility of a portion of its universal system benefits charge for:

6 (i) internal expenditures and activities that qualify as a universal system benefits programs expenditure,  
7 and these internal expenditures must include but not be limited to:

8 ~~———(A) expenditures~~ cost-effective conservation measures that result in a reduction in the consumption of  
9 electrical energy in the large customer's facility or that result in a more efficient use of electricity at the large  
10 customer's facility; and

11 (ii) internal expenditures and activities that result in the production of electrical energy from renewable  
12 resources for use in the large customer's facility.

13 (d) If the amount of the reimbursement in any given, and

14 ~~———(B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or~~  
15 ~~wholesale that are for the acquisition or support of renewable energy or conservation-related activities.~~

16 ~~———(b) Large customers making these expenditures must receive a credit against the large customer's~~  
17 ~~universal system benefits charge, except that any of those amounts expended in a calendar year that exceed,~~  
18 ~~when combined with the allocation by the large customer under subsection (7)(a), exceeds that large customer's~~  
19 ~~universal system benefits charge for the that calendar year must be used as a, the excess constitutes a credit~~  
20 ~~that may be used~~ against those charges in future years until the total amount of those expenditures has been  
21 credited against that large customer's universal system benefits charges.

22 (e) Subsection (7)(d) does not limit a large customer's obligation to allocate a minimum of 30% of its total  
23 universal system benefits charge for that year for low-income energy and weatherization assistance as required  
24 by subsection (7)(a).

25 (8) (a) A public utility shall prepare and submit an annual summary report of the public utility's activities  
26 relating to all universal system benefits programs to the commission, the department of revenue, and the energy  
27 and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit  
28 an annual summary reports report of activities to the cooperative utility's respective local governing body, the  
29 statewide cooperative utility office, the department of revenue, and the energy and telecommunications interim  
30 committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the

1 activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided  
 2 in subsection (3), to the department of revenue and the energy and telecommunications interim committee. The  
 3 annual report of a public utility or of the statewide cooperative utility office must be filed with the department of  
 4 revenue by March 1 of each year and must include but is not limited to:

5 ~~(a)~~(i) the types of internal utility and customer programs being used to satisfy the provisions of this  
 6 chapter;

7 ~~(b)~~(ii) the level of funding for those programs relative to the annual funding requirements level  
 8 prescribed in subsection (2); and

9 ~~(c)~~(iii) any payments made to the statewide funds in the event that internal funding was below the  
 10 prescribed annual funding requirements as required pursuant to subsections (4)(d), (5)(c), and (6); and

11 (iv) a summary of each large customer's universal system benefits charges, its allocation under  
 12 subsection (7)(a), and its expenditures and activities.

13 ~~(9)~~(b) A utility or large customer filing for a credit shall develop and maintain appropriate documentation  
 14 to support the utility's or the large customer's claim for the credit, and the documentation must be made available  
 15 to the public upon request, except to the extent that confidential information would be disclosed.

16 ~~(10)~~(9) (a) A large customer claiming credits for a calendar year shall submit an annual summary report  
 17 of its universal system benefits programs expenditures, activities, and expenditures- the allocation required by  
 18 subsection (7)(a) to the department of revenue by March 1 of each year and to the large customer's utility. The  
 19 annual report of a large customer must:

20 (i) identify its total universal system benefits charge for the year;

21 (ii) identify the amount of the large customer's allocation for low-income energy and weatherization  
 22 assistance;

23 (iii) for each cost-effective conservation expenditure or activity for which the large customer has sought  
 24 or is seeking reimbursement, identify the:

25 (A) total cost of the expenditure or activity;

26 (B) amount of the reimbursement received or sought for that year;

27 (C) amount of any credit to be used in future years; and

28 (D) amount of energy and capacity that will be saved on an annual basis and over the expected lifetime  
 29 of the expenditure or activity as a result of the expenditure or activity; and

30 (iv) for each expenditure or activity that results in the production of electrical energy from renewable

1 resources for use in the large customer's facility for which the large customer has sought or is seeking  
 2 reimbursement, identify the:

3 (A) total cost of the expenditure or activity;  
 4 (B) amount of the reimbursement received or sought for that year;  
 5 (C) amount of any credit to be used in future years;  
 6 (D) amount of energy produced by the renewable resource;  
 7 (E) cost-savings, if any, from the use of the renewable resource; and  
 8 (F) cost per kilowatt hour of the electricity produced by the renewable resource over the expected  
 9 lifetime of the resource. identify each qualifying project or expenditure for which it has claimed a credit and the  
 10 amount of the credit.

11 (b) Prior approval by the department of revenue or the utility is not required, except as provided in  
 12 subsection ~~(10)(b)~~ (9)(d).

13 ~~(b)(c)~~ If a large customer ~~claims a credit~~ receives a reimbursement for an expenditure or activity that  
 14 the department of revenue disallows in whole or in part, the large customer is financially responsible for the  
 15 disallowance.

16 (d) A large customer and the large customer's utility may mutually agree that ~~credits claimed by the large~~  
 17 ~~customer be first approved~~ the large customer's expenditures and activities first be approved as qualifying by  
 18 the utility. If the utility subsequently approves the large ~~customer credit~~ customer's reimbursement, the utility may  
 19 be financially responsible for any subsequent disallowance.

20 (e) A large customer seeking or having received a reimbursement shall develop and maintain  
 21 appropriate documentation to support the large customer's claim. This documentation constitutes a public  
 22 record, to the extent that the documentation does not contain a trade secret pursuant to 30-14-402 or is  
 23 otherwise confidential."

24

25 **Section 4.** Section 69-8-403, MCA, is amended to read:

26 **"69-8-403. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of a  
 27 commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail  
 28 transmission, distribution, and default supply services within the state of Montana, as provided in this chapter.

29 (2) The commission shall license electricity suppliers and enforce licensing provisions pursuant to  
 30 69-8-404.

1 (3) The commission shall promulgate rules that identify the licensees and ensure that the offered  
2 electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

3 (4) The commission shall establish just and reasonable rates through established ratemaking principles  
4 for public utility default supply, distribution, and transmission services, including rates for service classes to  
5 ensure the collection of 3% of each public utility's 2004 annual retail sales revenue in Montana and then, in  
6 subsequent years, as directed under 69-8-402, to fund universal system benefits programs, and shall regulate  
7 these services. The commission may approve rates and charges for those services based on alternative forms  
8 of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the  
9 alternative method complies with this chapter, and on the public utility's transition plan.

10 (5) The commission shall certify that a cooperative utility has adopted a transition plan that complies  
11 with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility  
12 files for certification.

13 (6) The commission shall promulgate rules that protect consumers, distribution services providers, and  
14 electricity suppliers from anticompetitive and abusive practices.

15 (7) (a) After July 1, 2010, the commission shall continuously monitor whether or not workable  
16 competition has developed for small customers.

17 (b) If the commission determines that workable competition has developed for small customers after  
18 July 1, 2010, the commission shall provide a report to the legislature that includes recommendations for  
19 legislative implementation of customer choice for small customers.

20 (8) The commission shall adopt rules implementing 69-8-402 including but not limited to rules that  
21 establish:

22 (a) allocations between universal system benefits programs;

23 (b) allocations within universal system benefits programs;

24 (c) reporting requirements; and

25 (d) procedures and guidelines for public utility low-income energy and weatherization assistance  
26 expenditures to exceed the funding level established in 69-8-402(4) in necessary and appropriate  
27 circumstances.

28 ~~(8)~~(9) In addition to promulgating rules expressly provided for in this chapter, the commission may  
29 promulgate any other rules necessary to carry out the provision of this chapter.

30 ~~(9)~~(10) This chapter does not give the commission the authority to:

1 (a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance  
2 with this chapter; or

3 (b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."  
4

5 **Section 5.** Section 69-8-409, MCA, is amended to read:

6 **"69-8-409. Bill information -- customer nonpayment -- commission rulemaking.** (1) Electricity bills  
7 to consumers must disclose each component of the bill in accordance with rules promulgated by the  
8 commission. Electricity bills must disclose but are not limited to the following:

9 (a) distribution and transmission charges;

10 (b) electricity supply charges;

11 (c) transition charges; and

12 (d) universal system benefits charges.

13 (2) The commission shall promulgate rules establishing the procedures relating to how and when an  
14 electricity supplier may discontinue service to a customer because of the customer's nonpayment and the  
15 procedures relating to reconnection, except that those rules may not apply to electricity suppliers that are  
16 cooperative utilities.

17 (3) Local governing bodies of a cooperative utility shall retain authority for cooperative utilities regarding:

18 (a) customer nonpayment and reconnection; and

19 (b) information contained in electricity bills to consumers, except that the amount of the universal system  
20 benefits charge must be identified in the electricity bill."

21

22 **Section 6.** Section 69-8-412, MCA, is amended to read:

23 **"69-8-412. Funds established -- fund administrators designated -- purpose of funds -- department**  
24 **rulemaking authority to administer funds.** (1) If, pursuant to ~~69-8-402(2)(f) or (5)(b)~~ 69-8-402(4)(d), (5)(c), or  
25 (6), there is any positive difference between credits and expenditures and the annual funding ~~requirement~~  
26 requirements, the department of revenue shall establish one or both of the following funds:

27 (a) a fund to provide for universal system benefits programs other than low-income energy assistance.

28 The department of environmental quality shall administer this fund.

29 (b) a fund to provide universal low-income energy and weatherization assistance. The department of  
30 public health and human services shall administer this fund.

1 (2) The purpose of these funds is to fund universal system benefits programs.

2 (3) The department of environmental quality and the department of public health and human services  
3 shall expend the money in each representative fund on universal system benefits programs in the utility service  
4 territory from which the money was received.

5 (4) The department of environmental quality and the department of public health and human services  
6 may adopt rules that administer and expend the money in each respective fund based on an annual assessment  
7 of identified funding needs in the utility service territory from which the money was received. In assessing the  
8 funding needs, the departments shall solicit utility and public comment from the utility service territory from which  
9 the money was received. The annual assessment must also take into account existing utility and large customer  
10 universal system benefits programs expenditures."  
11

12 **Section 7.** Section 69-8-413, MCA, is amended to read:

13 **"69-8-413. Department rulemaking authority.** (1) The department of revenue shall adopt rules on or  
14 before ~~September 1, 1999~~ December 1, 2005, specifying acceptable universal system benefits programs credits  
15 and expenditures and adopting procedures for challenged credits, including:

16 (a) establishing procedures and guidelines for cooperative utility low-income energy and weatherization  
17 assistance expenditures to exceed the funding level established in 69-8-402(4) in necessary and appropriate  
18 circumstances;

19 (b) establishing notification requirements for the receipt of utility and large customer reports; and

20 (c) establishing procedures allowing interested persons to provide the department with information or  
21 explanation regarding why a specific claimed credit or expenditure is inconsistent with the provisions of this  
22 chapter or rules adopted by the department.

23 (2) In developing rules under this section, the department of revenue shall consult with the public service  
24 commission.

25 ~~(2) Rules adopted pursuant to this part must be adopted in accordance with the Montana Negotiated~~  
26 ~~Rulemaking Act, Title 2, chapter 5, part 1.~~

27 ~~(3) Universal system benefits programs credits claimed or expenditures made prior to the adoption of~~  
28 ~~the rules under subsection (1) must be allowed and are not subject to the requirements of 69-8-414."~~

29

30 **Section 8.** Section 69-8-414, MCA, is amended to read:

1           **"69-8-414. Universal system benefits programs credit and expenditure review process.** (1) All  
 2 annual reports required pursuant to 69-8-402(8) and (10) must be filed with the department of revenue on March  
 3 4 of each year. Upon receipt of an annual report containing claimed credits and expenditures, the department  
 4 of revenue shall, within 120 days of the receipt of the report, evaluate whether the claimed credit or expenditure  
 5 is consistent with the provisions of this chapter and rules of the department. In undertaking this review, the  
 6 department may:

7           (a) request additional information from the utility or large customer; and

8           (b) meet with the utility or large customer or conduct a site visit.

9           (2) Upon a preliminary determination by the department of revenue that the claimed credit or expenditure  
 10 is inconsistent with the provisions of this chapter or rules of the department, the department shall notify the utility  
 11 or large customer and shall provide public notice of the preliminary determination. The department shall:

12           (a) issue a written statement of reasons, with supporting documentation, for its preliminary determination  
 13 that the claimed credit or expenditure is inconsistent with the provisions of this chapter or with the rules of the  
 14 department;

15           (b) allow the utility or large customer 15 days from the date of the preliminary determination to notify the  
 16 department, in writing, that it intends to contest the preliminary determination. If the utility or large customer fails  
 17 to contest the department's preliminary determination within 15 days, the preliminary determination becomes  
 18 final and is not subject to judicial review.

19           (c) establish procedures for contesting the department's preliminary determination, including an oral  
 20 hearing or a hearing by means of written submissions, including affidavits;

21           (d) allow interested persons to participate in the proceedings; and

22           (e) at the conclusion of the proceedings, make a final decision to certify or deny the claimed credit or  
 23 expenditure, providing a statement of reasons supporting its decision.

24           (3) Any documentation or information submitted by the utility or large customer constitutes a public  
 25 record, subject to department of revenue protective orders issued to prevent the disclosure of trade secrets  
 26 pursuant to 30-14-402 or otherwise confidential information.

27           (4) If a utility's or large customer's claimed credit or expenditure is denied, the utility or large customer  
 28 may, no later than 60 days following the final decision, challenge the department of revenue's denial in district  
 29 court of the first judicial district.

30           ~~(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of~~

1 ~~revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file~~  
2 ~~comments challenging the claim, including supporting documentation, with the department of revenue. A~~  
3 ~~challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit~~  
4 ~~claimant's annual reports required pursuant to 69-8-402(8) and (10).~~

5 ~~(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a~~  
6 ~~challenge is filed by an interested person, the department of revenue shall conduct an initial review of a~~  
7 ~~challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for~~  
8 ~~universal system benefits programs. If the department of revenue finds that the challenged credit is not likely~~  
9 ~~to qualify for universal system benefits programs, the department of revenue shall formally review the challenge;~~  
10 ~~otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons~~  
11 ~~supporting dismissal of the challenge. The department of revenue may request additional information from the~~  
12 ~~credit claimant or interested person. The department of revenue shall complete the initial review within 30 days~~  
13 ~~of the challenge.~~

14 ~~————(4) If the department of revenue determines that a formal review of a challenged credit is necessary,~~  
15 ~~the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and~~  
16 ~~interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled,~~  
17 ~~the department of revenue shall provide public notice of the hearing to the credit claimant and interested~~  
18 ~~persons.~~

19 ~~————(5) For a formal credit review challenge, the following procedures apply:~~

20 ~~————(a) The credit claimant shall provide documentation supporting the credit claimed to the department of~~  
21 ~~revenue and to all interested persons, subject to department of revenue protective orders for confidential or~~  
22 ~~sensitive materials, upon a showing of a privacy interest by the credit claimant.~~

23 ~~————(b) The department of revenue shall make all materials related to the claim, the challenge, and the~~  
24 ~~submitted comments available to the credit claimant and for public inspection and photocopying, subject to any~~  
25 ~~department of revenue protective orders.~~

26 ~~————(c) The credit claimant may respond in writing to any comments and other documents filed by an~~  
27 ~~interested person.~~

28 ~~————(d) The department of revenue may ask for additional detailed information to implement this section.~~

29 ~~————(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a~~  
30 ~~decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department~~

1 ~~of revenue's decision. The formal review of a challenged credit, including the department of revenue's final~~  
2 ~~decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to~~  
3 ~~comment on the challenged credit."~~

4

5 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

6

- END -